

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Agricultural Preserves

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Purpose

To set forth policies for the implementation of the California Land Conservation Act of 1965, the Williamson Act.

Background

In 1965 the State Legislature added to the Government Code Sections 51200 et. seq. which authorized the County to establish agricultural preserves. An agricultural preserve is an area devoted to either agricultural use, open space use, recreational use, or any combination of such uses, and compatible uses which are designated by the County. Preserves are established for the purpose of defining the boundaries of those areas within which the County will be willing to enter into contracts pursuant to the Act. Landowners within a preserve may enter into a Contract with the County to restrict their land to the uses stated above whereby the assessment on their land will be based on its restricted use rather than on its market value.

Policy

It is the policy of the Board of Supervisors that:

1. CRITERIA FOR ESTABLISHMENT OF PRESERVES

- a. **PUBLIC BENEFIT.** An agricultural preserve shall be created only when its establishment will be of benefit to the public.
- b. **ELIGIBLE AREAS.** Subject to the other requirements set forth in these criteria, applications shall be accepted from all geographical areas of the County. However, it is the intent of the Board of Supervisors to look more favorably upon applications for agricultural preserves for areas which are in the path of development. Areas in the path of development would include those areas designated as being within an urban land use classification in the General Plan or areas presently having such urban level services such as sewer and water or a reasonable expectation of having those services in the near future.
- c. **UNREASONABLE TAX BURDEN NOT CREATED.** The establishment of the agricultural preserve and consequent reduction in assessed value of land, if any, shall not place an unreasonable tax burden on other property owners. To assist in determining any possible tax burden, the Auditor and Controller prior to establishment of a preserve, shall make a study of the potential impact of the preserve on local taxing agencies and submit a report thereon to the Board of Supervisors.

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d. **MINIMUM PRESERVE SIZE.** The minimum size of an agricultural preserve shall be 100 acres, provided that in order to meet this requirement the preserve may include two or more ownerships if they are contiguous. Consideration will be given to the establishment of smaller preserves where there are exceptional circumstances. Exceptional circumstances shall include those situations where smaller preserves are justified due to the unique characteristics of the agricultural enterprises of the County and where such preserves would be consistent with the County General Plan. The minimum size preserve to be considered under this provision shall be in accordance with the minimum ownership size specified in paragraph three below.

2. **HEARINGS PREREQUISITE TO ESTABLISHMENT.** Agriculture preserves shall be established by resolution of the Board of Supervisors. The same procedure shall apply to any proposal to expand boundaries of or to disestablish a preserve or to diminish the size of or otherwise remove all land from an agricultural preserve.

3. **MINIMUM OWNERSHIP SIZE.** The resolution authorizing each agricultural preserve shall prescribe minimum ownership sizes that landowners must meet to be eligible for a contract. For improved agricultural land and on which there may be a dwelling or dwellings, provided said dwellings are for the use of the immediate family or employees engaged in the agricultural production of the premises, the recommended minimum ownership size for the various agricultural activities are:

Grazing	80 acres
Dairy Farming	40 acres
Cattle Breeding	40 acres
Horse Breeding	40 acres
Poultry	10 acres
Dairies	20 acres
Tree Crops	10 acres
Truck Crops	10 acres
Flowers (Field)	10 acres
Flowers (Hothouse)	10 acres

For recreation use or open space the recommended minimum ownership size is 20 acres. Any of the above specified minimum acreages may be reduced when there are exceptional circumstances that warrant a reduction in the required areas. Ownerships

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existing at the time of establishment of a preserve shall be exempted from the foregoing minimum acreages.

4. ZONING REGULATIONS. Zoning regulations shall be applied to all lands included in agricultural preserve and shall permit only agricultural uses, open space use, recreational use and other uses determined to be compatible with such uses. The application of such zoning regulations shall be considered concurrently with any action to establish or expand an agricultural preserve so that both shall become effective simultaneously.

5. CONTRACT CRITERIA

a. ELIGIBLE LAND. To be eligible to file an application for an agricultural preserve and enter in a contract with the County an applicant must own land devoted to agricultural use, open space use, as defined in subdivision (o), Section 51201 Government Code, recreational use, as defined in subdivision (n), Section 51201 Government Code, or combination thereof. The owner must be willing to restrict the use of his/her land to the uses set forth in the standard contract form which is made part of the resolution establishing an agricultural preserve. Summary definitions of these uses are:

(1) Agricultural use means use of the land for the purpose of producing agricultural commodities for commercial purposes.

(2) Open space means the use of the land to preserve its natural characteristic beauty, or openness for the benefit of the public, if such land is in:

(a) A scenic highway corridor

(b) A wildlife habitat

(c) A saltpond

(d) A managed wetland

(e) A submerged area

(3) Recreational use means the use of the land by the public with or without charge, for uses such as: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports. Any fee charged for recreational use of land shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public. Owners who file an application for

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the purpose of using their land for recreational use must apply for and obtain approval of a use permit in accordance with the County Zoning Ordinance.

b. **ELIGIBLE OWNERSHIPS.** To be eligible to enter into a contract with the County, an applicant must comply with the recommended minimum ownership size provisions of Section 3, above.

c. **LIMITATION ON DIVISION OF LAND.** Each contract shall contain a provision prohibiting an owner from dividing his/her land so as to create a parcel of land having a net area of less than a prescribed minimum to be determined by the Board of Supervisors. The Director of the Department of Planning and Land Use shall recommend a prescribed minimum in accordance with the minimums specified in Section 3, above, and in relation to the characteristic and use of the land.

d. **NONCONFORMING USES TO BE ELIMINATED.** All land in an agricultural preserve shall be used only for agricultural purposes for producing agricultural commodities, or for recreational or open space uses and uses compatible therewith. Any other uses which may have existed prior to the establishment of a preserve shall be treated as legal nonconforming uses as such uses are defined in the Zoning Ordinance, provided that any nonconforming use shall be eliminated from any land with respect to which a contract is executed, and such contract shall not be effective until such nonconforming use is eliminated.

e. **TERM.** The initial term of contract shall be for a minimum period of 10 years. An initial term of more than 10 years may be required by the Board of Supervisors for certain preserves where it is determined to be in the public interest. Also, an initial term of more than 10 years may be authorized by the Board upon request by a property owner.

f. **AUTOMATIC RENEWAL.** When the initial term of contract is for less than 20 years, beginning with the first day of January after the effective date of the contract, a year shall be added automatically to the initial term and on each succeeding anniversary thereafter unless or until a notice of non-renewal is given as provided below. When the initial term of contract is for 20 years or more, beginning with the anniversary date on which the contract will have an unexpired term of nine years, a year shall be added automatically to the initial term on each succeeding anniversary date thereafter unless or until a notice of nonrenewal is given as provided below.

g. **NONRENEWAL.** If either the owner or the County desires in any year not to renew the contract, the party shall serve written notice of non-renewal upon the other party in advance of the annual renewal date. A notice of non-renewal of a contract shall be given in the same manner as provided in Section 51245 of the Government

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Code, and such notice, whether by a property owner or the County, shall be recorded with the County Recorder by the Clerk of the Board of Supervisors prior to the January 1 renewal date.

6.CANCELLATION OF CONTRACT

A. MUTUAL CONSENT AND NECESSARY FINDINGS. An owner may petition the Board of Supervisors for cancellation of a contract as to all or any portion of the land which is subject to the contract, but the contract may not be canceled, in whole or in part, except by mutual agreement of the owner and County pursuant to Section 51282 of the Act (Government Code). The County may only consent to the cancellation of a contract, in whole or in part, when after a public hearing has been held in accordance with the provisions of Section 51284 of the Act (Government Code), the Board finds (1) that the cancellation is consistent with the purposes of the Act, or (2) that the cancellation is in the public interest. The cancellation is consistent with the purposes of the Act if all of the following findings are made:

1. A Notice of Nonrenewal (Government Code 51245) has been served.
2. Cancellation is not likely to result in the removal of adjacent lands from agricultural use.
3. Cancellation is for an alternative use which is consistent with the applicable provisions of the County General Plan.
4. Cancellation will not result in discontinuous patterns of urban development.
5. There is no proximate, non-contracted land which is both available and suitable for the same proposed use, or that the development of the contracted land would provide a more contiguous pattern of urban development than development of proximate, non-contracted land.

The cancellation is in the public interest only if the Board of Supervisors finds that other public concerns substantially outweigh the objectives of the Act and there is no proximate non-contracted land which is both available and suitable for the proposed use or that the development of the contracted land would provide a more contiguous pattern of urban development than development of proximate non-contracted land.

A contract shall not be canceled until the hereinafter specified cancellation fee has been paid.

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B. CANCELLATION FEE. In determining the State portion of the contract cancellation fee collected pursuant to Government Code 51283, the County Assessor shall determine the full cash value of the land as though it were free of the contractual restriction. The Assessor shall certify to the Board the cancellation valuation of the land for the purpose of determining the cancellation fee.

Prior to giving tentative approval to the cancellation of any contract, the Board shall determine and certify to the County Auditor the amount of the cancellation fee which the property owner must pay the County Treasurer. That fee shall be an amount equal to 12-1/2% of the cancellation valuation of the property.

The Board of Supervisors may waive said fee or portions thereof pursuant to Section 51283c of the Government Code.

7. EMINENT DOMAIN

a. Except as provided in subdivision d. below, when any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed or when such land is acquired in lieu of eminent domain for a public improvement, the contract shall be deemed null and void as to the land actually being condemned or so acquired as of the date the action is filed and for the purposes of establishing the value of such land, the contract shall be deemed never to have existed.

b. Except as provided in subdivision d. below, when such an action to condemn or acquire less than all of a parcel of land subject to a contract is commenced the contract shall be deemed null and void as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to the contract will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the contract.

c. The land actually taken shall be removed from the contract. Under no circumstances shall land be removed that is not actually taken, except as otherwise provided in the Act.

d. The provisions of subdivisions a. and b. and the provisions of Section 51295 of the Act shall not apply to or have any force or effect with respect to (1) the filing of any action in eminent domain for the condemnation of any easement for the erection, construction, alteration, maintenance, or repair of any gas, electric water or communication facilities by any public agency or to the acquisition of any such easement by any public agency or (2) the filing of any action in eminent domain by

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any public agency for the condemnation of the fee title or lesser estate for the establishment, construction (including the widening and realignment) and maintenance of any road, street or highway, whether existing or planned for the future, depicted on the circulation element of the San Diego County General Plan adopted by said Board prior to the date of the contract, and in the event of the filing of any such action in eminent domain or acquisition the contract shall be considered in the valuation process.

8. PROCESSING APPLICATIONS

Any application filed pursuant to this policy shall be accompanied by a written statement disclosing the following information:

- a. The names of all persons having an interest in the application as well as the names of all persons having any ownership interest in the property involved.
- b. If any person identified pursuant to paragraph a. above is a corporation or partnership, the names of all persons owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.
- c. If any person identified pursuant to paragraph a. above is a non-profit organization or a trust, the names of any person serving as director of the non-profit organization or as trustee or beneficiary or trustor of the trust.

9. APPLICATION FEES

a. ESTABLISHMENT OF PRESERVE

The fee for filing an application for the establishment of an agricultural preserve consisting of a single ownership shall be as prescribed in a resolution adopted by the Board of Supervisors.

b. INCLUSION WITHIN A PRESERVE BY EXTENSION OF PRESERVE BOUNDARIES

The fee for filing an application for extending the boundaries of an established agricultural preserve to include a single ownership, shall be as prescribed in a resolution adopted by the Board of Supervisors.

c. APPLICATION FOR CONTRACT COVERING LAND INCLUDED WITHIN AN ESTABLISHED PRESERVE

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Where an owner has filed an application for establishment of his/her land as an agricultural preserve or for inclusion of such land in an agricultural preserve, the fee for such application shall be deemed to have included the fee for an application to enter into a contract covering such land. Where the owner of land which is included within an established agricultural preserve, but which is not covered by a contract makes application with the County to enter into a contract covering such ownership, the fee for filing such application shall be as prescribed by a resolution adopted by the Board of Supervisors.

d. REFUND OF FEES

(1) **REFUND OF FEES UPON WITHDRAWAL OF APPLICATION.** At any time prior to final action on any application filed pursuant to this policy the applicant by written request filed with the Planning Department, or with the Board of Supervisors may withdraw the application and terminate further consideration thereof. Where such written request has been filed and the application withdrawn, there shall be refunded to any applicant who paid a fee the total amount of such fee less any costs incurred by the County incidental to action or proposed action on the application, provided that where no hearing on the application has been set before the Board of Supervisors the amount refunded shall not be less than 50% of the fee.

(2) **REFUND OF FEES UPON TERMINATION OF PROCESSING OF APPLICATION BY BOARD OF SUPERVISORS.** Where the Board of Supervisors determines that processing of any application should be terminated in the public interest, it may order such processing terminated and may thereon refund to the applicant all or a portion of the fees paid for said application.

e. ESTABLISHMENT OF TRUST FUND. The Director of Planning and Land Use shall establish a trust fund, into which all fees received from applicants shall be deposited. Each such fee shall remain in the trust fund until one of the following events occurs: (1) the application is rejected; (2) the application is withdrawn; or (3) the application is heard by the Board of Supervisors. At that time, the Director of Planning and Land Use shall compute and pay from the trust fund any refund which is due to the applicant pursuant to paragraph 7.d, above. The portion of the fee which is not refunded shall be transferred to the General Fund.

10. APPLICATION TO REMOVE LAND FROM A PRESERVE

If an owner of land in an agricultural preserve that is or is not subject to a contract wishes to remove his/her land from the preserve he/she must file an application. The same procedures shall be followed for the removal of land from the preserve that is followed

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for the enlargement of a preserve and in compliance with all provisions specified in the Act. The filing fee for such application shall be computed the same as paragraph 9.b above. However, if the owner is also making application for the reclassification of land to a different zone category the filing fee shall be waived in favor of the fee which is paid for the processing of the rezone application.

11. EXECUTION OF CONTRACTS COVERING LAND INCLUDED WITHIN AN ESTABLISHED PRESERVE

Where the owner of land which is included within an established agricultural preserve, but which is not covered by a contract, makes application with the County to enter into a contract covering such ownership, the contract will be processed by the Real Property Division. The Director of the Department of General Services is authorized to execute such contracts in the name of the County.

Sunset Date

This policy will be reviewed for continuance by 12-31-12.

Board Action

9-11-68 (5)	8-2-77 (85)
9-30-68 (61)	10-19-77 (14)
7-22-69 (143)	8-15-78 (25)
11-11-71 (6)	4-14-82 (27)
11-23-71 (10)	12-15-82 (39), operative 3-1-83
6-25-74 (116)	10-8-86 (6)
7-8-75 (59b)	8-22-89 (47)
7-19-77 (17)	6-22-05 (21)

CAO Reference

1. Department of Planning and Land Use
2. Auditor and Controller
3. Assessor
4. Department of Agriculture, Weights and Measures
5. County Counsel
6. Department of General Services